

MARTIN M. SHEETS

IBLA 76-554

Decided August 29, 1977

Appeal from decisions of the Oregon State Office, Bureau of Land Management, rejecting drawing entry card oil and gas lease offers, OR 13648, OR 13718.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases:
Applications: Drawings

A simultaneous oil and gas lease offer is properly rejected and the filing fee retained where the offeror, in completing the drawing card, does not provide the name of the State in which the parcel of land is located.

APPEARANCES: Martin M. Sheets, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Martin M. Sheets has appealed from separate decisions of the Oregon State Office, Bureau of Land Management, which rejected his oil and gas lease offers, OR 13648 and OR 13718 for the reason that appellant did not indicate the name of the State where the lands are situated in the appropriate space provided on the respective drawing entry cards. 1/ The cards from appellant were the only drawing entry cards received for either parcel, listed on a monthly list of lands available to simultaneous oil and gas leasing.

The pertinent regulation provides: "Offers to lease such designated leasing units by parcel numbers must be submitted on a form approved by the Director, 'Simultaneous Oil and Gas Entry Card' signed

1/ Card OR 13648 was incomplete, having no State named. Card OR 13718 was incorrect, showing "Texas." Each card should have shown "Oregon."

and fully executed by the applicant or his duly authorized agent in his behalf." 43 CFR 3112.2-1(a). The notice listing the available lands carried this statement: "Simultaneous oil and gas offers will be rejected, and the filing fee remittance will be retained by this office, for any of the following defects: * * * 5. Card incomplete: * * * No State; Proper State not shown; * * *."

Appellant admitted his error in that "Oregon" was not entered in the appropriate space provided on the card. He does not contend that he misunderstood the instructions on the drawing entry card, the notice, or in the regulations that the name of the State in which the lands are situated should be entered.

[1] The fact situation here presented has been before this Board on many occasions, and each time the Board has ruled that simultaneous drawing entry card oil and gas lease offers must be rejected where the offerors did not include the name of the appropriate State in the designated space on the card. Ray Granat, 25 IBLA 115 (1976); Jerry van Waardhuizen, 26 IBLA 152 (1976); Rexmull F. Manyeto, 25 IBLA 218 (1976). We adhere to that position. The BLM State Office properly rejected the subject offers.

We point out that the instant cases differ from other cases involving omission of the State name in that each earlier case had third parties involved in the filing. Here, the only card was that from appellant for each parcel. In our opinion, this situation does not merit different consideration. The Board has consistently held that drawing entry cards in the simultaneous filing procedure may not be "cured" of any defect by submission of additional information after the end of the filing period. E.g., Channing Ballard, 26 IBLA 276 (1976); Southern Union Production Co., 22 IBLA 379 (1975). To afford this appellant the opportunity to amend his cards long after the filing period terminated would be to ignore the language of the regulation and the precedents heretofore established. In effect, it would be converting the filings of appellant from drawing entry cards to "over-the-counter" filings, which may be corrected after filing, but with priority of filing construed from the date of correction. The simultaneous regulations do not permit this. 43 CFR 3112.5-1 provides that if the successful drawee for a particular leasing unit is unqualified for any reason, the lands in that leasing unit shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure.

So in this case, the offers were properly rejected, and the lands must be posted to a future list before they will become available to oil and gas leasing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Douglas E. Henriques
Administrative Judge

I concur:

Edward W. Stuebing
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

Appellant has in effect amended his drawing entry card. No other offers were received. If the amendment had been received before the end of the filing period, there is no question but what appellant would be given the lease. Under 43 CFR 1821.2-2(g) the amendment should be considered "as being timely filed," before the filing period closed. That regulation provides:

§ 1821.2-2 Time limit for filing documents.

* * * * *

(g) When the regulations of this chapter provide that a document must be filed or a payment made within a specified period of time, the filing of the document or the making of the payment after the expiration of that period will not prevent the authorized officer from considering the document as being timely filed or the payment as being timely made except where:

1. The law does not permit him to do so.
2. The rights of a third party or parties have intervened.
3. The authorized officer determines that further consideration of the document or acceptance of the payment would unduly interfere with the orderly conduct of business.

Section 1821.2-2(g) was enacted to provide relief in situations such as that herein, where the expense to the Government of soliciting further offers is clearly not justified.

Even if the relief section were not applied, under the Board's interpretation of 43 CFR Part 3110 appellant should be accorded his priority to what could be a valuable lease. The majority does not discuss the effect of Duncan Miller, 5 IBLA 35 (1972).

Appellant's card 1/ was submitted in an Oregon State Office drawing and the parcel was otherwise properly identified by the

1/ It will be noted that the drawing entry card form used herein is not entirely clear. The word "State" (without a box for entry thereof) appears under the box for offeror's social security number and to the right of the box for his address. It does, however,

number of a parcel included in the drawing. There is no question but that the parties - appellant and the Government - understood the parcels for which appellant applied. In those cases in which the Board has affirmed rejection of defective drawing entry card offers without allowing subsequent correction by applicants, the stated rationale has been that a first-drawn but unqualified offer may not be allowed priority over a second-drawn qualified offer. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (9th Cir., 1976), sustaining Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974); Grady Argenbright, 27 IBLA 24 (1976); Ray Granat, 25 IBLA 115 (1976). This rationale is not applicable in a situation where there are no other applicants. Thus, decisions such as Granat provide no authority for rejection of appellant's offer where the mistake in the original offer has been corrected, and where there are no intervening rights. 2/

No drawing is held when only one offer is submitted; 3/ the Board has therefore held that a sole applicant may withdraw his offer at any time prior to the issuance of the lease, even after the time when a drawing would otherwise have been held. Duncan Miller, supra. Similarly, a sole applicant should be permitted to make a timely amendment to correct a defect on his drawing entry card.

fn. 1 (continued)

appear above the box for the parcel number and "State" box is provided as a part of offeror's address. An additional entry card is now in use, with the state abbreviation included as a part of the parcel number. The Department in A.M. Shaffer, 73 I.D. 293, 298 (1966), discussed the principle that an unclear regulation should not be applied to cut off a valuable right.

2/ No intervening over-the-counter offers may be filed unless no offers are received under the simultaneous filing procedure. 43 CFR 3112.1-1(b).

3/ 43 CFR 3110.1-6(b) provides:

"Simultaneous filings. If more than one offer to lease all or any part of the acreage covered by an expired, canceled, relinquished, or terminated lease is filed during the period provided for in subpart 3112, their priorities will be determined by a public drawing." Cf. 3112.2-1(a)(3).

Departmental regulation 43 CFR 3112.5-1 4/ does not require that appellant lose his priority. That regulation would only be pertinent if there were other applicants for the parcel and a drawing was held.

Joseph W. Goss
Administrative Judge

4/ Section 3112.5-1 provides:

"If the successful drawees for a particular leasing unit are unqualified to receive the lease for any reason, including timely payment of the first year's rental, the lands in the numbered leasing unit shall be included in a subsequent list of lands available for filing under the simultaneous drawing procedure." (Emphasis added.)

